

1 CRIMINAL COURT OF THE CITY OF NEW YORK

2 COUNTY OF KINGS: PART TP6

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4 THE PEOPLE OF THE STATE OF NEW YORK, :
5 : DOCKET NO.2013KN029785
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-against-

DUSHAINÉ ASHLEY,

Defendant.

120 Schermerhorn Street
Brooklyn, New York 11201
July 15, 2014

B E F O R E:

THE HONORABLE SIMPSON, Judge.

A P P E A R A N C E S:

OFFICE OF KENNETH P. THOMPSON, ESQ.
DISTRICT ATTORNEY - KINGS COUNTY
350 Jay Street
Brooklyn, New York 11201
BY: PETER KIE, ESQ.
Assistant District Attorney
For the People

BROOKLYN DEFENDER SERVICES
BY: CHAD DOWNING, ESQ.
For the Defendant

LISA MARIE LA BATE
Official Court Reporter

PROCEEDINGS

1 COURT OFFICER: Calendars 1 and 2, Dushaine
2 Ashley.

3 MR. DOWNING: BDS by Chad Downing.

4 MR. KIE: Peter Kie.

5 MR. DOWNING: I understand that ADA Basso and I
6 were consenting to the adjournment requested by the People.
7 There are a few matters I would like to address with the
8 courts permission. One, your Honor, move to dismiss the
9 superseding information as facially insufficient on docket
10 ending 2014KN29785. I believe it was filed on May 7th.

11 THE COURT: There is a superseding.

12 MR. DOWNING: Superseding information filed along
13 with a new statement notice which is also an issue.

14 THE COURT: Talking about 2013KN029785. Which one
15 did I do the hearing on?

16 MR. DOWNING: That was the other case, that was
17 the 2012 docket.

18 THE COURT: I think something stamped May 6th
19 superseding information.

20 MR. DOWNING: Yes, your Honor. Our position is
21 the complaint does not establish probable cause that Mr.
22 Ashley exercised dominion or control over the marijuana
23 found inside the apartment.

24 THE COURT: Whose case is this?

25 MR. KIE: The assigned is out today.

PROCEEDINGS

1 THE COURT: This is facially insufficient.

2 I cannot dismiss it. Stated upon the
3 superseding information, the above time and place the
4 deponent observed the defendant Jose Carlos in possession
5 of approximately two ounces of marijuana. In that the
6 deponent entered said location and observed the defendant,
7 Jose Carlos, on the floor and the defendant, Dushaine
8 Ashley, did enter the said location shortly thereafter. He
9 wasn't even in the house shortly thereafter, they stated in
10 sum and substance, see, this is what happens when you let
11 strange people into our apartment and deponent did recover
12 said marijuana on the floor which was again by Mr. Carlos.
13 The deponent further states, the deponent had professional
14 training and the language, that is it.

15 MR. DOWNING: The statement the People are using
16 in the complaint --

17 THE COURT: It doesn't matter about the
18 statement. Just because it is your home you cannot control
19 what people bring into your home and obviously they said
20 they see somebody with the stuff and he comes in
21 subsequently.

22 Superseding information facially insufficient.
23 People can supersede if they want to.

24 MR. KIE: Yes, your Honor.

25 (Whereupon, an off-the-record discussion was

PROCEEDINGS

1 held.)

2 MR. KIE: Your Honor, was the only charge in the
3 superseding information the 221.05.

4 THE COURT: No, I will tell you. Unlawful
5 possession of marijuana, marijuana in the fifth degree,
6 marijuana in the fourth degree. Insufficient.

7 I am going to put the case on for eighty-six
8 chargeable days. Friday, both cases on.

9 MR. DOWNING: Thank you, your Honor.

10 MR. KIE: People requesting three days which
11 happens to be Friday as well.

12 THE COURT: 7/18.

13 MR. DOWNING: Thank you, your Honor.

14 * * * *

15 C E R T I F I C A T I O N

16
17 IT is hereby certified that the foregoing is
18 a true and accurate transcript of the proceedings.

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21 LISA MARIE LA BATE

22 Official Court Reporter
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-against-

DUSHAINÉ ASHLEY,

Defendant.

120 Schermerhorn Street
Brooklyn, New York 11201
July 18, 2014

B E F O R E:

THE HONORABLE SIMPSON, Judge.

A P P E A R A N C E S:

OFFICE OF KENNETH P. THOMPSON, ESQ.
DISTRICT ATTORNEY - KINGS COUNTY
350 Jay Street
Brooklyn, New York 11201
BY: ROBERT A. BASSO, ESQ.
Assistant District Attorney
For the People

BROOKLYN DEFENDER SERVICES
BY: CHAD DOWNING, ESQ.
For the Defendant

LISA MARIE LA BATE
Official Court Reporter

PROCEEDINGS

1 COURT OFFICER: Calendars 1 and 2, Ashley
2 Dushaine.

3 MR. DOWNING: BDS by Chad Downing.

4 MR. BASSO: Robert A. Basso for the Office of the
5 District Attorney.

6 THE COURT: Okay for docket ending 9785, I think
7 it is final for superseding information.

8 MR. DOWNING: Yes, your Honor.

9 MR. BASSO: Judge, the People purport that the
10 complaint does make out the crime that the People are
11 burdened with making out a prima facie case in People V
12 Casey that should be held in a light most favorable to the
13 People. It should just make out the crime that has been
14 committed.

15 THE COURT: I know that on June 10th a decision
16 was issued by Judge Gerstein and the People were charged
17 with eight-six days.

18 MR. BASSO: Yes.

19 THE COURT: And then on the 15th People need an
20 SSI, I can't remember why though.

21 MR. DOWNING: I noted that I move to dismiss the
22 complaint as facially insufficient, your Honor agreed and
23 required that the People supersede today and they have not.
24 And therefore it should be dismissed.

25 THE COURT: What was the reason again.

PROCEEDINGS

1 MR. DOWNING: The complaint did not establish
2 probable cause that he had dominion or control over it. The
3 superseding information --

4 THE COURT: How do you say he has dominion or
5 control?

6 MR. BASSO: Judge, the defendant came into the
7 location and made --

8 THE COURT: If I come visit you and you have pot
9 in your living room, I am going to get charged, that is
10 what it says here.

11 Basically if you have marijuana in your living
12 room and I come into your home and then know, the police
13 are already in the home, I come in after the police and I
14 get charged for the marijuana that you are standing by.

15 MR. BASSO: The defendant made an admission
16 referenced in the complaint.

17 THE COURT: What he says is, that is what happens
18 when you let strange people into your apartment.

19 MR. BASSO: Into our.

20 THE COURT: Right.

21 MR. BASSO: So he is claiming dominion and
22 control over the apartment.

23 THE COURT: You guys are going to have to appeal
24 this. This is dismissed. No way, first of all even when
25 you are in a car there is no presumption of marijuana. You

PROCEEDINGS

1 are in the house, somebody is in your house, they bring
2 marijuana into your home in the bathroom use using the bats
3 room and drop marijuana on the floor and somebody you just
4 met at a bar drinks or what ever, I don't know the
5 circumstances. The police come in there and then they see
6 the person closer to it, they see him come in after the
7 fact and yet because it is his place and that is why we
8 have a lot of these search warrant cases where you have --
9 the last time I did arraignments they must have had a
10 party, twenty people in the house, target was target A,
11 twenty people arrested and majority of those cases got
12 dismissed. Yet alone twenty people were arrested. The
13 person that was the target, of course, the People proceeded
14 with that case. Just because somebody is in your home with
15 something that is why I said clean it up. This statement
16 was, that is why you cannot let strangers into your house
17 and you shouldn't.

18 MR. BASSO: Yes, Judge, the strangers in your
19 apartment which corroborates the fact the defendant was
20 there at the scene when the police were there which also
21 corroborates marijuana was recovered from the location.

22 THE COURT: No, this is what you are not focusing
23 on. Off the record.

24 (Whereupon, an off-the-record discussion was
25 held.)

PROCEEDINGS

1 THE COURT: I want to be clear and state this on
2 the record. I am dismissing it because it says here that I
3 am going to read the complaint, the deponent states at
4 above time and place the deponent observed the defendant in
5 a possibility of two ounces of marijuana in that the
6 deponent entered said location and observed the defendant
7 Jose Carlos on the floor and defendant Dushaine did enter
8 said location shortly thereafter. And then, deponent and
9 then the defendant says this is what happens when you let
10 strange people into our apartment. So, I asked the People
11 and they gave a response to supersede. Stay sealing thirty
12 days.

13 MR. BASSO: For the record the People oppose.

14 THE COURT: Okay the other case. Okay.

15 MR. BASSO: Judge, I had Detective Jones on must
16 appear for today. Detective Jones called me yesterday and
17 stated that there was some other case that he was involved
18 in that he didn't think that the department was going to
19 let him come here. So Detective Jones has not shown up
20 today . Is it possible to get a short date next week some
21 time to get this over with.

22 MR. DOWNING: We can get it over with today if
23 the People offer a violation, Mr. Ashley would take that.

24 THE COURT: What is the offer? Last time the
25 offer was a violation, time served.

PROCEEDINGS

1 MR. BASSO: The offer was a violation if he
2 would take both violations, being that one is dismissed.

3 THE COURT: Any offer today?

4 MR. BASSO: If we can get a short date.

5 THE COURT: Okay, do that. What date?

6 MR. BASSO: Sometime next week.

7 THE COURT: Sure.

8 MR. BASSO: It will be reduced for a bench.

9 THE COURT: Wednesday the 23rd, thank you.

10 MR. DOWNING: Your Honor, for the record, there
11 is a pretty good amount of discovery missing. I did not
12 tell you at the hearing, oversight on my part. Missing the
13 complaint report, any memo book entries.

14 THE COURT: The officer that testified at the
15 hearing?

16 MR. DOWNING: Yes. All they have is the copy of
17 her arrest report.

18 THE COURT: You need the online booking and the
19 UF 61 scratch or typed and you don't have the memos.

20 MR. DOWNING: Correct.

21 THE COURT: Okay.

22 MR. BASSO: It is just the complaint, the 61.

23 (Continued on next page.)
24
25

PROCEEDINGS

1 MR. DOWNING: I don't have the 61. Need the
2 written and typed 61.

3 THE COURT: Okay.

4 * * * *

5 C E R T I F I C A T I O N

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7 IT is hereby certified that the foregoing is
8 a true and accurate transcript of the proceedings.

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11 LISA MARIE LA BATE

12 Official Court Reporter
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